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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/085,190

02/27/2002

Theodore Wortrich

1444

7590

02/18/2004

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EXAMINER

NGUYEN, VI X

ART UNIT

PAPER NUMBER

3731

DATE MAILED: 02/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/085,190

Applicant(s)

WORTRICH, THEODORE

Examiner

Victor X Nguyen

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3731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) 1-8 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 9-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 2.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Election/Restrictions*

1. This application contains claims 1-8 drawn to non-elected inventions. In Paper No. 4, dated January 27, 2004, applicant elected to prosecute Group III. Furthermore, it was stated that claims 5-8 read upon the elected group. To further the prosecution of the application, the examiner has elected claims 9-12, which read on Species 1 of Group III. Non-elected claims 1-8 are withdrawn from further consideration.

The requirement is still deemed proper and is therefore made **Final**.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 9-11 are rejected under 35 U.S.C. 102 (e) as being anticipated by Hellenkamp (U.S. 6,527,788).

Hellenkamp discloses in figs. 6a, 7 and col. 4, lines 1-65, a microkeratome blade having all the limitations of claim 9, including: a cutting blade (310, 310') has a thin body with an anterior linear boundary beveled to a cutting tip (313). The cutting blade also includes a substantially continuous curvilinear posterior boundary in a generally hemispherical form (fig. 7, the blade of Hellenkamp can be characterized as a generally hemispherical form, i.e., a half of a

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symmetrical, approximately spherical object as divided by a plane of symmetry.). The blade body also is formed to include an aperture (see col. 11, lines 33-40).

Regarding claims 10-11, Hellenkamp discloses the blade body includes a slot (see col. 12, lines 5-9) at a posterior position opening to the interior aperture. The device further includes a blade holder (320) having a blade engaging surface including a boss (328, fig. 6a) configured to mate within the holder.

Claim 12 is rejected under 35 U.S.C. 102 (e) as being unpatentable by, or in the alternative, under 35 U.S.C. 103 (c) as obvious over Hellenkamp.

The blade is of stainless steel (see col. 11, lines 39-41). The blade could be made with a thickness about 0.01'', especially if rotated such that the deep of the blade was between 0.3 to 0.4''. Furthermore, the bevel at the anterior boundary is about 0.05'' deep. In the alternative, it has been held that changes in size only require routine skill in the art. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the blade with a thickness about 0.01'', especially if rotated such that the deep of the blade was between 0.3 to 0.4''. Furthermore, the bevel at the anterior boundary is about 0.05'' deep.

### *Conclusion*

3. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Pat. No. 6,506,198 to Amano

U.S. Pat. No. 6,126,668 to Bair et al

U.S. Pat. No. 5,215,104 to Steinert

U.S. Pat. No. 6,350,272 to Kawesch

U.S. Pat. No. 5,807,380 to Dishler

U.S. Pat. No. 5,817,115 to Nigam

U.S. Pat. No. 5,586,980 to Kremer

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor X Nguyen whose telephone number is (703) 305-4898. The examiner can normally be reached on M-F (8-4.30 P.M).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Milano can be reached on (703) 308-2496. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Victor X Nguyen  
Examiner  
Art Unit 3731

Vn *√*  
February 11, 2004

  
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